

Appl. No. : 09/435,562
Filed : November 8, 1999

REMARKS

With this amendment, Claims 102-105 are canceled, and Claims 38, 59, 78-79 and 101 are amended. Claims 38-45, 51-98, 101 and 106-109 are thus presented for further Examination.

Interference and Rejections Under 35 U.S.C. § 112

Applicant has addressed the rejections of Claims 110-128 in the previously filed Amendment dated October 6, 2003 by canceling Claims 110-128 without prejudice.

Applicants have amended Claims 38, 59 and 78-79 to correct the lack of antecedent basis in Claims 38, 59-60 and 78-79.

Rejections Under 35 U.S.C. § 102 and 103

The Examiner has rejected Claims 110-128 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,551,303 to Van Tassel et al. The Examiner has rejected Claims 101 and 107-109 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,853,422 to Huebsch et al. The Examiner has rejected Claim 101 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 3,540,431 to Mobin-Uddin. The Examiner has rejected Claim 101 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 3,874,388 to King et al. The Examiner has rejected Claims 102-105 and 109 under 35 U.S.C. § 103(a) as unpatentable over Huebsch in view of U.S. Patent No. 5,961,545 to Lentz et al.

As indicated above, Applicants have cancelled Claims 102-105 and 110-128, and amended Claims 38, 59, 78-79 and 101.

Claim 101 is directed to a device for implantation in the left atrial appendage having, inter alia, an endothelialization membrane having a pore size sufficient for endothelialization and porosity in the range of about 5 to about 60 microns.

Huebsch fails to teach or suggest the unique combination of features recited by Claim 101, including inter alia the selection of a pore size in the range of about 5 to about 60 microns. Applicant has found that in certain embodiments this pore size provides desired endothelialization for a left atrial appendage device.

Moreover, Lentz indicates that expanded PTFE tubes having a microporous structure allow natural tissue ingrowth and cell endothelialization once implanted into the vascular system. However, Lentz also indicates an increase in the internodal distance within a given structure

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results in enhanced tissue ingrowth, as well as, cell endothelialization. Lentz then indicates that increasing the porosity of the tubular structure reduces the ability of the graft to retain a suture placed therein during implantation and tends to exhibit low axial tear strength. As a result, multi-layer ePTFE tubes have been developed to strike an effective balance between porosity and radial strength.

In contrast, the device as presently claimed uses an endothelialization membrane carried by the supports, so there is no need to strike a balance between porosity and radial strength. Furthermore, the pore size is selected to provide an advantageous rate of cell endothelialization at the left atrial appendage.

Accordingly, none of the cited art teaches or suggests a device for implantation in the left atrial appendage having, inter alia, an endothelialization membrane having a pore size sufficient for endothelialization and porosity in the range of about 5 to about 60 microns.

As Claims 106-109 are dependent on independent Claim 101, Claims 106-109 are patentable for these reasons as well as because they recite a unique combination of features not taught or suggested by the prior art.

Accordingly, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested.

Allowable subject matter

Applicant notes with appreciation the Examiner's indicated allowability of the subject matter of Claims 51-58, 61-77 and 80-98, Claim 106 if rewritten in independent form, and Claims 38-45, 59-60 and 78-79 if rewritten to overcome the 112 rejections.

Claims 38, 59, and 78-79 have been amended to overcome the rejections under 35 U.S.C. 112. Thus, Applicant respectfully submits that claims 38-45, 59-60 and 78-79 are now in condition for allowance, and such action is respectfully requested.

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CONCLUSION

The applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims pursuant to statutory sections 102, 103 and/or 112, the reasons therefor, and arguments in support of the patentability of the pending claim set are presented above. In light of these amendments and remarks, reconsideration and withdrawal of the outstanding rejections is respectfully requested.

Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, do not narrow the claims, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language.

If the Examiner has any questions which may be answered by telephone, he is invited to call the undersigned directly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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